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ABSTRACT

This chapter of "Principles of School Business Management" reviews major federal and state court cases dealing with fiscal equalization of state school support programs and summarizes and discusses the major legal issues that were addressed. The major federal cases include "McInnis v. Shapiro," "Burrus v. Wilkerson," and "Van Dusartz v. Hatfield," and culminate in "San Antonio v. Rodriguez," in which the United States Supreme Court held that the right to an education was not guaranteed by the U.S. Constitution. The federal courts were unable to come up with a definitive operational definition of educational opportunity. State courts experienced similar difficulty. The state cases included "Serrano v. Priest" (California), "Milliken v. Green" (Michigan), "Shofstall v. Hollins" (Arizona), "Blase v. State of Illinois," "Northshore School District No. 417 v. Kinnear" (Washington), "Thompson v. Engleking" (Idaho), "Robinson v. Cahill" (New Jersey), "Olsen v. State of Oregon," "Knowles v. State Board of Education" (Kansas), "Horton v. Meskill" (Connecticut), "Board of Education, Levittown v. Nyquist" (New York), "Seattle v. State" (Washington), "Pauley v. Kelly" (West Virginia), "Danson v. Casey" (Pennsylvania), "Lujan v. Colorado State Board of Education," "Board of Education v. Walter" (Ohio), "Washakie County School District v. Herschler" (Wyoming), "Thomas v. Steward" (Georgia), "Somerset County Board of Education v. Hornbeck" (Maryland), "Dupree v. Alma School District" (Arkansas), and "East Jackson Public Schools v. State" (Michigan). These cases resulted in several decisions that public school financing systems were unconstitutional, while in other states decisions upheld the constitutionality of financing systems. The trend seems to be toward conservative decisions upholding state financing schemes. Over 110 notes and citations to the cases are provided. (PGD)

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Fiscal Equity Challenges

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Commencing in the late 1960s and continuing into the present decade, a new form of litigation occurred in the federal and state courts of the United States. Prior school finance litigation was filed usually by aggrieved taxpayers, commonly from affluent school districts, who were unhappy with the manner in which taxes were collected and redistributed.

School finance litigation initiated in the late 1960s challenged the methods of distributing funds to public elementary and secondary schools because many state public school finance systems allowed considerable variance in financial resources per pupil. It had long been recognized by both citizens and professional educators that the quality of public schools depended upon the child's geographic location in the state. Frustrated by the unwillingness of the state legislatures to reform school finance systems to better equalize fiscal resources, and buoyed by a national atmosphere conducive to prompting individual rights and social equity, unhappy citizens sought remedies through the judicial process.

Beginning with *McInnis v. Shapiro*,[1] the highly publicized *Serrano v. Priest*,[2] and the United States Supreme Court's decision in *San Antonio v. Rodriquez*,[3] several federal cases and a plethora of state cases have challenged individual state school finance distribution systems in the United States.

Considerable variation existed in the manner in which the cases were prepared and presented to the courts. In some cases, the plaintiffs contended that they were denied equal protection under the federal Constitution and/or comparable provisions of the state constitutions, while other plaintiffs argued that the public education provisions of their state constitutions were not being satisfied by their current state school finance system. A few cases found their way to the United States Supreme Court, although most cases were decided in respective state judicial systems. While the United States Supreme Court ruled against those persons who challenged the constitutionality of individual state school finance programs, plaintiffs have both won and lost decisions in the state courts based upon state constitutional provisions.

The purposes of this chapter are threefold: first, the major federal cases dealing with fiscal equalization of state school support programs are reviewed; second, state cases are reviewed; third, the major legal issues that were addressed by both federal and state cases are summarized and discussed.

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Review of the Federal Cases

The first fiscal equalization case to reach the United States Supreme Court was *McInnis v. Shapiro*[4] from Illinois. The plaintiffs sought a reduction of expenditure variation between local school districts and indicated that the variation in educational needs mandated consideration in the allocation of state revenues if equal protection under the Fourteenth Amendment would be satisfied. The United States District Court of the Northern District of Illinois experienced difficulty with what it viewed as a nebulous concept and indicated that there were no "discoverable and manageable standards" by which to determine whether the requirements of the Fourteenth Amendment were satisfied. In a critique of the decision, it was observed that "the two standards (posed by the plaintiffs) are mutually irreconcilable since educational needs may demand a much higher expenditure for certain children than for others."[5] The United States Supreme Court affirmed the lower court's decision without discussion and, by doing so, delayed the definitive ruling in *San Antonio v. Rodriquez*[6] for over three years.

In a similar case, *Burrus v. Wilkerson*,[7] actually filed a few days earlier than *McInnis v. Shapiro*, the plaintiff charged that the Virginia state school support program violated the Fourteenth Amendment to the United States Constitution since state aid was not allocated to local school districts on the basis of educational needs. In addition, the plaintiff questioned the measure (i.e., equalized property valuation per average daily attendance) used by the state to measure the fiscal capacities of the local school districts. In ruling that the system of financing public schools in Virginia was constitutional, the federal district court said:

> [T]he courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the state. We can only see to it that the outlays on one group are not invidiously greater or less than that of another. No such arbitrariness is manifest here.[8]

As in the *McInnis v. Shapiro* case, the United States Supreme Court merely affirmed the district court's ruling.

In *Van Dusartz v. Hatfield*,[9] a United States District Court in Minnesota agreed with the plaintiff's contention that the wealthier school districts in Minnesota not only had greater revenue per child but also enjoyed a lower tax rate. The court found that the level of spending for publicly financed education in Minnesota is profoundly affected by the wealth of each school district.[10] Further, the court observed that a system of public school financing that makes spending per pupil a function of the school district's wealth violates the equal protection guarantee of the Fourteenth Amendment.[11]

In 1971, the United States District Court for the Western District of Texas, in *San Antonio v. Rodriquez*,[12] accepted the plaintiff's position that the state must exercise "fiscal neutrality" in financing public schools. Briefly stated, fiscal neutrality requires that the quality of public education be a function of the state as a whole and not a function of the wealth of the local school district. The court also accepted the plaintiff's contention that education is of fundamental interest to the state and should be examined by the courts on the basis of "strict scrutiny." However, when the case was appealed to the United States Supreme Court in 1973, the lower court's ruling was overturned, resulting in a shattering defeat for those advo-

cating the egalitarian position. Specifically, the Supreme Court held that the right to an education is not a fundamental right explicitly or implicitly guaranteed by the United States Constitution. Since the Texas system did not violate the criteria of suspect class or fundamental right, the Court held that Texas was not obliged to show a compelling interest but only a rational relationship to the method of distributing state funds.

Since this definitive ruling by the Supreme Court, only one fiscal equalization case has entered the federal judicial system. In *Scarnato v. Parker*,[13] the plaintiffs challenged the constitutionality of the Louisiana minimum foundation program under the equal protection clause of the Fourteenth Amendment. However, citing *San Antonio*, the three-member federal court granted the defendants' motion to dismiss the suit in its entirety.

In conclusion, federal litigation regarding fiscal equalization has revolved around the standard of equality of educational opportunity and equal protection under the Fourteenth Amendment. Although equal educational opportunity is a socially worthy concept, it has been very difficult for the federal courts to identify an operational definition, as illustrated by the following confusing, and sometimes conflicting, statements by courts and litigants: "equality can be obtained by allowing local school districts the authority to tax themselves at sufficiently high levels to overcome wealth differences with other school districts;"[14] "equality can be attained by allocating resources on the basis of educational need;"[15] "equality may be accomplished by giving each student the same amount of money, one dollar—one scholar;"[16] "the state could allow unlimited local taxation but revenues earned in excess of a certain amount per pupil would be captured by the state;"[17] "equality requires that the state measure local school district wealth more accurately than by property valuations, possibly a combination of personal income and property;"[18] "equality assumes that poor children in all school districts are discriminated against, that all children regardless of wealth residing in school districts which fall below some predetermined wealth standard are discriminated against."[19]

The difficulty of providing an operational definition for the vague concept of equality of educational opportunity is not unique to the federal courts. Since state constitutions are more expansive than the federal Constitution, when the concept of equality of educational opportunity is coupled with even more nebulous phrases such as "primary obligation of the state,"[20] "general and uniform,"[21] and "thorough and efficient,"[22] conflicting state court decision are inevitable.

Review of State Cases

The first of the state fiscal equalization cases to gain national attention was the *Serrano v. Priest*[23] decision in which the California Supreme Court ruled that the method of funding public elementary and secondary education was unconstitutional. In this extremely controversial case, the court held that both the Fourteenth Amendment and the state equal protection clause were violated because the state school finance system made the quality of education a function of the local school district's taxable wealth:

> We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the

> right to an education in our public schools is a fundamental interest which cannot be conditional on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause.[28]

After the above ruling, known as *Serrano I*, the California Supreme Court remanded the case to the trial court with specific instructions. As a result of the California Supreme Court's ruling in *Serrano I*, the California legislature attempted to make the allegations moot by passing two bills which brought about significant changes in the public school financing system. Nevertheless, the trial court ruled that while the public school finance system was not in violation of the Fourteenth Amendment of the United States Constitution, it did violate the equal protection provision of the California Constitution. In addition to other specific instructions, the trial court allowed the legislature a period of six years in which to bring the school finance system into constitutional compliance and assured the legislature that the judgment did not require the adoption of any particular system of school finance.

The trial court's ruling was then appealed to the California Supreme Court and on December 30, 1976, the trial court's decision was affirmed and is referred to as *Serrano II*.[25] The court said that while there have been "... substantial increases in the foundation levels, those increases, considered alone, do not eliminate any of the constitutional features which existed at the time of *Serrano I*."[26]

In 1972, the Michigan Supreme Court handed down a ruling similar to *Serrano* in the *Milliken v. Green*[27] decision. However, after first ruling that the Michigan system of financing public elementary schools was violative of the equal protection clause of the state's constitution, the court experienced a change of judges and the decision was vacated. In the new decision, the court ruled that the evidence did not prove that the equal protection of the children in low wealth districts had been violated.

> Without disagreeing with either theory of defining educational opportunity—inputs or outputs—we cannot accept without criticism either of the further-narrowed definitions offered by the parties. The reduction of the sum total output to the accomplishment of the pupils on a few achievement tests would be grossly unjust to both the educators and the pupils, for education must extend far beyond the limits of verbal facility or mathematical proficiency. With respect to the input received by a school, the level of taxable resources within a district is only one of the myriad inputs into an educational system.[28]

Shortly after the *San Antonio v. Rodriquez*[29] decision in 1973, the Arizona Supreme Court ruled that neither the equal protection clause of the state constitution nor the "general and uniform" provision had been violated in *Shofstall v. Hollins*.[30] The court modestly interpreted the "general and uniform" provision to mean that the state would provide a minimum school year, certify school personnel and establish requirements for courses. The Arizona court cited *San Antonio* and indicated that there was not a constitutional question unless there was absolute denial. The court elected not to enter into the "thicket" of fiscal equalization, educational need or fiscal neutrality. Instead, it was the opinion of the court that the state only had to provide for the rudiments of a system of free general education.

A state constitutional question regarding the financing of public schools was also raised in the 1973 case of *Blase v. State of Illinois*.[31] Specifically, the plaintiffs centered their case on the interpretation of a constitutional provision concerning the state's role in funding public education in Illinois. Article X, Section 1, of the 1970 Illinois Constitution provided:

> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.

The plaintiffs contended that the last sentence of Article X, Section 1, required that the state provide not less than 50 percent of the funds for public elementary and secondary education. The Illinois Supreme Court disagreed and ruled that the sentence in question was intended only to express a goal or objective and was not intended to be a specific command.

In the next major state fiscal equalization case, *Northshore School District No. 417 v. Kinnear*,[32] the petitioner proffered the following four contentions of unconstitutionality: 1) that children are denied equal protection of the laws in violation of the Fourteenth Amendment and comparable provisions of the state constitution due to a disparity of taxable resources per pupil; 2) that taxpayers in poorer districts are denied equal protection because they pay a higher tax rate than taxpayers in wealthier districts to raise the same amount of revenue per pupil; 3) that the state had failed to adhere to the provision of the Washington Constitution which reads: "It is the paramount duty of the state to make ample provision for the education of all children . . ."[33] and 4) that the state had failed to provide a general and uniform system of public schools as mandated by the state constitution.

The court rejected the first claim because the statistical evidence showed that the assessed valuation had little, if anything, to do with the quality of education. The court also indicated that there was no evidence to support the claim that one district or another provided superior or inferior educational opportunities.

In reply to the second contention, that the plaintiffs were denied equal protection, the court said:

> That it take more millage to raise the same amount of dollars on low valued property than it does on high valued property is no more than a meaningless truism and can be answered with another truism that the lower the value of one's property the lower one's taxes, neither truism having anything to do with the equal protection clause of both constitutions so long as everybody in the taxing scheme pays the same rate. Differences in assessed valuation per pupil among the various districts do not to a constitutional degree substantially affect the amounts of revenue per pupil available nor the amount expended per pupil; nor the cost per pupil in providing about the same quality of education throughout the state.[34]

The court noted that even if the state were converted into a single district to afford equal educational opportunities, expenditures per child would vary due to infinite variations in geography, climate, terrain, social and economic conditions,

transportation, special services and local choices of extracurricula and other services.

The plaintiff's third contention, that the state failed to make ample provision for the education of all children, as provided by the state constitution, was also rejected.

> [A]lthough the state must assume the duty of making ample provision for the education of all children and is required to do so without discrimination as to race, sex, or national origin, constitutionally speaking, that duty or function is the same as any other major duty or function of state government.[35]

In reply to the fourth contention, that the state must provide a system that is general and uniform, the court said:

> A general and uniform system, that is, a system which within reasonable constitutional limits of equality makes ample provision for the education of all children, cannot be based upon exact equality of funding per child because it takes more money in some districts per child to provide about the same level of educational opportunity than it does others.[36]

The Washington Supreme Court indicated that a general and uniform system is a system that provides every child with free access to certain minimum and reasonably standardized educational programs. The court amplified the term "minimum program" by suggesting that public education should include instructional facilities offering educational opportunities up to at least the twelfth grade, with provision for a child to transfer between districts without loss of standing.

In 1975 the Idaho Supreme Court reversed a lower court's decision in *Thompson v. Engleking*[37] and held that the Idaho Constitution did not require equal educational opportunity for all students attending public elementary and secondary schools. Further, the court indicated that there was no evidence to support the contention that the quality of educational opportunity is dependent upon educational expenditures or that equal educational opportunity is dependent upon the amount and value of the taxable property within the school district in which the pupil resides. Consequently, it was the opinion of the court that the lower court has erred in its interpretation of the Idaho Constitution. The Supreme Court said:

> The record does not demonstrate a failure by the legislature to comply with its mandate to establish a system of basic, thorough, and uniform education; nor does that record demonstrate an inadequacy of funding to maintain that system of education . . .[38]

A case that gained national attention and illustrated a court's difficulty in dealing with a state's school finance system in the wake of *San Antonio v. Rodriquez*[39] was New Jersey's *Robinson v. Cahill.*[40] Although a final decision was not made until 1975, the case was first decided by the Superior Court of New Jersey in 1972. The facts presented by the plaintiffs showed that 67 percent of public school revenue came from the local tax base which resulted in considerable per pupil expenditure variation among school districts. In agreeing with the plaintiffs, the court found that the system discriminated against pupils in poor districts and also discriminated against taxpayers by imposing an unequal burden for public education. Therefore, in the opinion of the court, the system violated the requirement of equal protection under the law contained in both the New Jersey and the federal constitutions. Most importantly, the court ruled that the New Jersey Constitution was violated by the state's failure to provide a "thorough and efficient system of public education."[41]

Shortly after the lower court's decision in *Robinson v. Cahill*, the United States Supreme Court handed down the landmark decision of *San Antonio v. Rodriquez*.[42] The *San Antonio* decision was taken into consideration by the New Jersey Supreme Court when the *Robinson v. Cahill* decision was appealed. The New Jersey Supreme Court stated that the state constitution's equal protection clause may be more expansive than the Fourteenth Amendment of the federal Constitution; nevertheless, the court refused to hold the New Jersey system of financing in violation of the state's equal protection clause and preferred to support the lower court's ruling that the New Jersey school finance system did not meet the constitutional mandate for "thorough and efficient."

The New Jersey Supreme Court experienced much difficulty in providing the legislature with an operational definition of "thorough and efficient" or with appropriate guidelines for implementing a public school finance program that would meet the court's interpretation of this elusive concept. In the original decision, handed down on April 3, 1973, the New Jersey Supreme Court required the legislature to define and develop a school finance program that would satisfy the constitutional requirement of "thorough and efficient."

After various attempts to devise a system that was "thorough and efficient," the legislature had not provided sufficient state funds to meet the constitutional mandate as interpreted by the New Jersey court. On May 13, 1976, the New Jersey Supreme Court enjoined both local and state officials from expending any funds after July 1, 1976, for the support of the New Jersey public schools unless appropriate funding was accomplished by the legislature. On July 1, 1976, the schools officially closed for two weeks, giving the legislature the impetus to enact a state income tax which persuaded the court that the legislature intended to comply with the "thorough and efficient" mandate. The injunction was lifted.

Another case, decided shortly after the *Robinson v. Cahill*[43] decision, was *Olsen v. State of Oregon*.[44] On appeal to the Oregon Supreme Court, the plaintiffs alleged that the Oregon Public School Finance System violated the Oregon Constitution because it created unequal educational opportunities and variation in local control due to fiscal inequalities. Further, the plaintiffs alleged that the legislature had not complied with the constitutional mandate to establish a uniform and general system of common schools. Contrary to the *Robinson v. Cahill* decision, the Oregon Supreme Court ruled:

> We hold that the Oregon system of school financing does not violate the Oregon Constitution. Our decision should not be interpreted to mean that we are of the opinion that the Oregon system of school financing is politically or educationally desirable. Our only role is to pass upon its constitutionality.[45]

Also in 1976, in *Knowles v. State Board of Education*,[46] the Kansas public school finance system was challenged as unconstitutional based upon the equal protection provision of the state and federal constitutions. However, the case was rendered moot by the court since the legislature altered the method of financing public education after the case was argued.

The next decision after *Robinson v. Cahill*[47] in which a state supreme court ruled a state finance program unconstitutional occurred in *Horton v. Meskill*.[48] The Connecticut Supreme Court noted that there was a link between the financial resources and range of course offerings, number of teachers per special program, library resources and pupil/teacher ratios among Connecticut school districts.[49] In

addition to the concern expressed by the court in regard to a lack of pupil equity (i.e., variance in financial and educational resources per pupil which are linked to a variance in taxable resources), the court noted that the present system failed to provide equity to the taxpayers. The court recognized the *San Antonio* rationale regarding education as a "fundamental right" but suggested that the Connecticut Constitution my provide a greater degree of individual protection.

> Decisions of the United States Supreme Court defining fundamental rights are persuasive authority to be afforded respectful consideration, but they are to be followed by Connecticut courts only when they provide no less individual protection than is guaranteed by Connecticut law.[50]

The court found that, according to the Connecticut Constitution, education is a fundamental right and, as such, deserves application of the "strict scrutiny" test.

> . . . we must conclude that in Connecticut the right to education is so basic and fundamental that any infringement of that right must be scrutinized . . . the state system of financing public elementary and secondary education as it presently exists and operates cannot pass the test of "strict scrutiny" as to its constitutionality.[51]

Although *Horton v. Meskill* was originally decided in 1977, it recently has been relitigated. In 1979, legislation was enacted and subsequently amended to achieve equity in educational financing in direct response to the 1977 decision. The constitutionality of the new plan was challenged again in 1984. The plaintiffs stated that both 1979 school finance legislation and subsequent school finance enactments were unconstitutional. The post-1979 enactments included phasing-in state funding at a lower level and slower rate than originally determined, substituting three-year-old data for two-year-old data for calculation purposes and permitting towns to delay full contributions under the minimum expenditure requirement. The trial court and supreme court found the 1979 plan constitutional, but disagreed on the post-1979 amendments. The lower court determined the enactments perpetuated expenditure disparities, but the supreme court remanded the amendments back to the lower court. The lower court was instructed to review the amendments in relation to a three-pronged test to determine constitutionality. The test provides:

> 1) . . . [T]he plaintiffs must make a *prima facie* showing that disparities in educational expenditures are more than *de minimum* in that the disparities continue to jeopardize the plaintiffs' fundamental right to education. 2) If they make that showing the burden then shifts to the state to justify these disparities as incident to the advancement of a legitimate state policy. 3) If the state's justification is acceptable, the state must further demonstrate that the continuing disparties are nevertheless not so great as to be unconstitutional.[52]

An opinion that generated considerable national attention was *Board of Education, Levittown v. Nyquist*.[53] The plaintiffs challenged the equal protection clause and the education article of the New York Constitution. In addition, the plaintiffs alleged that the system of financing public schools in New York violated the equal protection clause of the Fourteenth Amendment of the United States Constitution. The original plaintiffs were school children, school districts and counties representing less affluent areas of New York. Subsequently, an amended complaint was entered by plaintiffs-intervenors consisting of boards of education of Rochester, Buffalo, Syracuse, City of New York and others. After a lengthy review of the New York public school finance system, with extended emphasis placed on the prob-

lems of the large metropolitan areas (e.g., municipal overburden, pupil absenteeism, special education needs and discrepancies of fiscal disparity), the court declared the New York system of public school finance unconstitutional.

The court ruled that education was not a fundamental right, thus eliminating the need to subject the system to the strict scrutiny examination.[54] However, the so-called "sliding scale" test which lies between the standard of "strict scrutiny" and the less rigorous rational basis test was applied.[55] Since the defendants proffered that the correct equal protection analysis should be the rational basis, for evaluation, the court applied both standards.[56] Regarding the application of the rational test basis, the court said "The evidence amply supports the conclusion that the plenary operation of the state aid formula does not bear a rational solution to the objective for which it was devised."[57]

The court also ruled that the state was not in compliance with the requirements of the education article of the state constitution, "It is sufficient to state that on the evidence addressed, the manner in which the state has been shown to provide funds for the 'maintenance and support of a system of free common schools' fails to meet the obligations imposed by 1, Article X1 of the New York Constitution."[58]

In reversing the lower courts, New York's highest court, New York Court of Appeals,[59] held that: 1) the existing provisions for state aid to finance public education did not violate the equal protection clauses of the federal and state constitutions, and 2) the education article's requirement that the legislature provide for the maintenance and support of a system of free common schools was being met in New York. Average pupil expenditure in New York exceeded per pupil expenditures provided by all but two states; thus, the school financing scheme did not violate the state's education article.

The Washington Supreme Court once again addressed the issue of financing public elementary and secondary schools in *Seattle v. State*.[60] The court, partially reversing its earlier *Northshore*[61] decision, ruled that the state foundation program was unconstitutional as applied to Seattle. The court did not focus its attention on disparities among Washington school districts except as caused by the reliance of many school districts on "special excess funding" for discharging their duty to provide a basic education. By design, special excess funding was supposed to supplement basic educational programs for all children, but due to financial constraints partially caused by inflation the voter-approved special excess levies had become essential for many school districts. The court agreed with the lower court opinion that "state funding was insufficient to provide for any of the suggested definitions of basic education or a basic program of education."[62]

In a 1979 decision, *Pauley v. Kelly*,[63] the West Virginia Supreme Court reversed a lower court's dismissal of the plaintiff's contention that the state school finance system did not provide a "thorough and efficient" system of public education as mandated by the West Virginia Constitution. The court did not note specific areas of financial and educational disparities among the schools but based its ruling upon the "sorry conditions in Lincoln County Schools."[64] The court said "The mandatory requirements of a 'thorough and efficient' system of free schools. . .made education a fundamental, constitutional right in (West Virginia)."[65]

Since education was ruled a fundamental interest, the West Virginia court ruled that legislative enactments regarding financing public elementary and secondary schools should be strictly scrutinized to determine whether they were justified by a compelling state interest. The *Pauley* case was remanded to the lower court with

specific instructions for retrial and the West Virginia school finance system was declared unconstitutional.

In 1982, Kanawha County Circuit Court, after extensive hearings, issued a lengthy opinion. On May 21, 1982, a supplemental opinion was issued and on September 1, 1982, the state board of education and the state superintendent of schools were directed to develop a master plan.[66]

In the 1979 *Danson v. Casey*[67] decision, the plaintiffs, the School District of Philadelphia and parents of Philadelphia public school children, filed suit claiming that Sections 14 and 32, Article III of the Pennsylvania Constitution were violated by the state public school finance system. The alleged violation was premised upon the assumption that Philadelphia had inadequate revenue to provide a "normal" program of education to its pupils. The plaintiffs requested that the state be enjoined from distributing state funds to any school district until Philadelphia received sufficient funds to provide a normal program of educational services.

The court concluded that no child was being denied an "adequate," "minimum" or "basic" program of education.[68] The court also cited the 1938 *Teachers' Tenure Act* cases[69] which stated that the words "thorough and efficient" should not be given narrow interpretation. The words "thorough and efficient" were intended to be positive models; narrow interpretation would restrict future legislative actions regarding educational policy. The court said:

> . . . everything directly related to maintenance of a "thorough and efficient system of public schools" must at all times be subject to future legislative control . . . Thus, the Commonwealth has not failed to fulfill any duty it may have to the School District of Philadelphia to provide state subsidies to help finance public school education.[70]

In *Lujan v. Colorado State Board of Education*,[71] the plaintiffs challenged the financing of Colorado public schools by claiming violations of the education clause of the state constitution. The plaintiffs also alleged that the due process and equal protection clauses of the state constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution were violated by the state system of financing public schools.

The lower state court determined that the education clause, Article IX, Section 2 of the state constitution (which provides for the "establishment and maintenance of a thorough and uniform system of free schools") constituted a fundamental right. In addition, the lower court ruled that poorer school districts had a disproportionate number of low-income pupils; therefore, a suspect classification was created. Using the rationale that education was a fundamental right and that a suspect classification could be identified, the court applied the "strict scrutiny" test. The court ruled that the Colorado public school finance system violated both the state constitution and the federal Constitution.

However, the Colorado Supreme Court[72] reversed the lower court ruling and held that Colorado's finance system did not violate Article IX, Section 2 of the Colorado Constitution, nor did it deny equal protection of the law to appellees. It further held that Colorado's method of financing capital outlay, including a limitation on a district's taxing authority, was constitutional and rationally related to a legitimate state purpose. The court determined that, unlike the federal Constitution, the state constitution is not one of limited powers; the Colorado Constitution merely mandated action by the General Assembly. Therefore, education is not a fundamental right in Colorado.

The Ohio system of public school finance was challenged as unconstitutional on the basis of violating the "thorough and efficient" and equal protection clauses of the Ohio Constitution in the 1979 case, *Board of Education v. Walter.*[74] The Court of Appeals of Hamilton County affirmed the lower court decision that the school finance system violated the equal protection provision of the state constitution, but reversed the ruling that the system violated the "thorough and efficient" provision.[74]

Upon appeal, the Ohio Supreme Court had to determine whether to apply the test of "strict scrutiny" or use the "rational basis" standard to the equal protection challenge. The court said, "The first step in applying the 'strict scrutiny test' is to determine if a fundamental interest is affected."[75] The court found: "because this cause deals with difficult questions of local and statewide taxation, fiscal planning and educational policy, we feel this is an inappropriate cause in which to invoke 'strict scrutiny.' "[76]

Subsequently, the court implemented the rational basis test and said, ". . . in adopting this standard, [the court] had held that every statute is presumed constitutional and can be declared invalid only when its unconstitutionality is shown beyond a reasonable doubt."[77]

After a lengthy review of the historical development of local control of the Ohio public schools, the court decided that a rational basis for supporting the present school finance system was the need to maintain traditional local control. The court justified the disparities in per pupil expenditures as a function of the need to retain local decision-making. The second issue reviewed by the court was whether the Ohio school finance system violated the Ohio constitutional provision of "thorough and efficient." The court found that no school district was totally starved for funds and that no school district lacked teachers, buildings or equipment. While the court recognized that legislative discretion is not absolute, wide discretionary powers for the legislature are necessary.[78] Specifically, the court indicated that it is not a function of the court to question the wisdom of the General Assembly.[79] Under the broad constitutional parameters of the Ohio Constitution, the legislature did not abuse its authority; consequently, the public school finance system was ruled as "thorough and efficient."

One of the more expansive state supreme court decisions regarding the constitutionality of a state school finance system was the Wyoming case of *Washakie County School District v. Herschler,*[80] rendered in 1980. The court indicated that the poor school districts showed a consistent pattern of less total revenue per student than rich districts based on assessed valuation per student.[81] The court accepted the plaintiffs' argument that the quality of educational services is related directly to the availability of financial resources. The court said, " . . . until equality of financing is achieved, there is no practicable method of achieving equality of quality."[82]

In Interpretations similar to those made by other state courts, the Wyoming Supreme Court indicated that certain provisions of the Wyoming Constitution may be more demanding than equivalent federal Constitutional provisions. In providing public elementary and secondary educational services, the Wyoming system of school financing was ruled unconstitutional because it failed to afford equal protection, thus violating the state constitution. The court ruled "that the matter of

education involves a fundamental interest of great public importance."[83] In contrast to the *San Antonio v. Rodriquez* decision,[84] and several state decisions, the Wyoming court accepted the argument that the wealth of an individual school disrict is a suspect classification. As a consequence, the court said:

> . . . the state has the burden of demonstrating a compelling interest . . . which is served by the challenged legislation and which cannot be satisfied by any other convenient legal structure. The state has failed to make any showing that other methods are not available or possible.[85]

A lower court in Georgia found that the state public school finance system was unconstitutional under the equal protection clause of the Georgia Constitution in *Thomas v. Steward.*[86] Due to the technical design of the Georgia public school aid program, the court noted, ". . . the foundation program largely ignores the dramatic differences in taxable wealth among school districts by giving wealthy districts virtually the same amount of state funds per pupil as poorer districts."[87] As a consequence, the court ruled that the present state system ". . . amounts to unequal and arbitrary discrimination."[88] The court accepted the plaintiffs' contention that education is a fundamental right and the standard of "strict scrutiny" should be applied to determine constitutionality of the state school finance system. The court ruled that the state was unable to justify any necessary or substantially related compelling interest in the method used to finance public schools in Georgia.

However, the Supreme Court of Georgia[89] reversed the lower court's ruling that the Georgia system of financing public education violated the equal protection clause of the state constitution. The court held that Georgia's financing scheme bore a rational relationship to a legitimate state purpose, namely, to provide basic educational funding for the children of the state. The supreme court agreed with the lower court's finding that the Georgia Constitution did not restrict local school district officials from doing what they can to improve the quality of education. The Georgia Constitution, however, did not require the state to equalize educational opportunities between districts.

Another decision concerning fiscal equalization of a state public school finance system was rendered by a Maryland lower circuit court in the Spring of 1981. In *Somerset County Board of Education v. Hornbeck,*[90] the state public school finance system was challenged as unconstitutional under the education clause of the state constitution and a portion[91] of the Maryland Declaration of Rights. The education clause is quite similar to the language of other states which directs the General Assembly to; " . . . establish throughout the State a thorough and efficient System of Free Public Schools; and [to] provide by taxation, or otherwise, for their maintenance."[92]

After reviewing the funding formula used in the Maryland public school finance system in relation to the "thorough and efficient" provision, the court ruled:

> The evidence shows that the present financing scheme significantly underfunds the plaintiffs' schools whose requirements are at least as great as any in the State, while it permits virtually unlimited spending in other subdivisions. As a result, the quality of the schools in the plaintiffs' subdivisions is inferior to those in wealthier subdivisions with respect to buildings, equipment, materials, and staff. The existing system is not "thorough and efficient" . . .[93]

In regard to the equal protection challenge made by the plaintiffs, the court agreed with *San Antonio v. Rodriquez*[94] that "wealth of a school district" cannot be considered a suspect classification. However, the court did agree with the plain-

tiffs' contention that education should be considered a fundamental right and, as such, challenged legislation should be subjected to the standard of "strict scrutiny." Further, the court ruled:

> Article VIII requires the school system to be full and complete by contemporary standards throughout the State. Article 24 requires equality for each pupil in the State . . . The only practical and realistic way to determining and achieving equality is with respect to the division of the funds committed to education."[95]

The Maryland Court of Appeals, that state's highest court, overturned the lower court's decision and ruled the Maryland scheme for financing public education was constitutional. In *Hornbeck v. Somerset*,[96] the court held that equal expenditures were not required to fulfill that state's mandate for a thorough and efficient system of free public schools. Furthermore, the court found no violation of the federal equal protection clause or the equal protection guarantee of the Maryland Declaration of Rights.

In contrast to the Georgia, Colorado and New York cases, the Supreme Court of Arkansas, in *Dupree v. Alma School District*,[97] held the financing scheme of Arkansas to be unconstitutional and violative of Article XIV, Section 1 of the Arkansas Constitution. The Arkansas public school finance system relied extensively upon the local tax bases of the individual school districts. As a consequence, the court declared the Arkansas law denied equal protection and equal educational opportunities to students residing in property-poor districts, and declared that there was no rational relationship between the state's scheme and the needs of individual districts.

Recently, plaintiff school districts challenged Michigan's financing scheme as unconstitutional because it produced unequal per pupil funding among districts. The Michigan Court of Appeals, in *East Jackson Public Schools v. State*,[98] held that education is not a fundamental right in Michigan. The state did not have to provide equal per pupil funding among districts. The state scheme did not deny pupils equal protection of the laws.

Summary and Discussion

Since the *McInnis v. Shapiro* case, litigated in 1968, there has been a monumental amount of litigation concerning the financing of public elementary and secondary education. In 1973, the United States Supreme Court provided a definitive ruling in the case of *San Antonio v. Rodriquez* in answer to the charge that the Texas public school finance system failed to provide equal protection guaranteed by the Fourteenth Amendment to the United States Constitution. Since the *San Antonio* decision, the highest state courts in Connecticut,[99] New Jersey,[100] Washington (as it applied to Seattle),[101] California,[102] Wyoming,[103] Arkansas[104] and West Virginia[105] have ruled that the financing schemes of their respective states are unconstitutional. However, the methods used by the seven state supreme courts to arrive at the same conclusion have varied considerably. The states of California, Connecticut, West Virginia and Wyoming have ruled that education is a fundamental right under public education provisions of their state constitutions. The Connecticut, Wyoming and Arkansas school finance systems were found to violate their state constitutional guarantees of equal protection. The Washington court ruled that, while

education is not a fundamental right, both the equal protection and public education clauses of the state constitution had been violated.

Of the cases which have been decided by the states' highest courts since the 1973 *San Antonio* decision, five states, Ohio,[106] Pennsylvania,[107] Georgia,[108] Colorado[109] and New York[110] have upheld the constitutionality of their state public school finance systems. The Ohio, Pennsylvania and Colorado courts did not accept the argument that education is a fundamental right; therefore, the less strenuous rational basis test was applied. The Ohio Supreme Court ruled that the objective of maintaining local control of public schools was a rational basis for explaining the disparities in per pupil expenditures. The Pennsylvania Supreme Court stated that the "thorough and efficient" clause was only a positive mandate that should be interpreted broadly to allow future legislatures to exercise discretion concerning educational policy. The Colorado Supreme Court declared that the state constitution merely mandated action by the General Assembly.

The Georgia Supreme Court found there was a rational relationship between the state public school finance program and the education of its children and that there was no violation of state protection guarantees. In New York, the court found the equal protection clauses of both the federal and state constitutions were not violated, nor was the state's education article of the state constitution.

Since the *San Antonio* decision, a number of high state courts, when faced with a challenge to the states' public school finance systems, have found for the defendants. An exception is the recent *Dupree v. Alma School Dist. No. 30*,[111] in which the Arkansas Supreme Court struck down that state's public school finance system on the grounds that it violated the equal protection clause and denied students equal educational opportunity guaranteed by the state constitution.

The current trend seems to favor a more conservative era, one in which the courts are upholding state financing schemes. Nevertheless, litigation will likely continue.

Notes

1. 293 F. Supp. 327 (Ill. 1968).
2. 487 P.2d 1241 (Cal. 1971), 557 P.2d 929 (Cal. 1976).
3. *San Antonio Indep. School Dist. No. I v. Rodriquez*, 411 U.S. 1 (1973).
4. *McInnis*, 293 F. Supp. 527.
5. K. Alexander, *Judicial Standard of Equality: A Definitional Problem;* Critical Issues in Educational Finance, Harrisonburg, Va.: Virginia Institute for Educational Finance, 1975, 19-20.
6. *San Antonio*, 4-11 V.S. 1.
7. 310 F. Supp. 572 (Va. 1969), *aff'd per curiam*, 397 U.S. 44 (1970).
8. *Id.* 310 F. Supp. at 574.
9. 334 F. Supp. 870 (Minn. 1971).
10. *Id.* at 873.
11. *Id.* at 877.

12. 337 F. Supp. 280 (W.D. Tex. 1971).
13. 415 F. Supp. 272 (La. 1976).
14. *Hargrave v. Kirk*, 313 F. Supp. 944 (Fla. 1970), vacated, 401 U.S. 479 (1971).
15. *McInnis v. Shapiro*, 293 F. Supp. 327, 328-330 (N.D. Ill. 1968).
16. *Id.* at 330-331.
17. *Id.* at 332-333.
18. *Burruss*, 310 F. Supp., 574.
19. Alexander, Note 5, page 25. *See also*, *Rodriquez v. San Antonio*, 25-27.
20. *Thomas v. Steward*, No. 8275 (Polk County, Ga., Super, Ct. 1981).
21. *Northshore School Dist. No. 417 v. Kinnear*, 84 Wash. 2d. 685, 530 P.2d 178 (Wash. 1974).
22. *Robinson v. Cahill*, 303 A.2d 273, 274 (N.J. 1976).
23. *Serrano*, 487 P.2d 1241.
24. *Id.* at 1244.
25. *Serrano*, 557 P.2d 929.
26. *Id.* at 936.
27. 203 N.W.2d 457 (Mich. 1972), vacated, 212 N.W.2d 711 (Mich. 1973).
28. *Id.* at 716.
29. *San Antonio*, 411 U.S.1.
30. 110 Ariz. 88, 515 P.2d 590 (Ariz. 1973).
31. 55 Ill. 2d 94, 302 N.E.2d 46 (Ill. 1973).
32. 530 P.2d 178 (Wash. 1974).
33. *Id.* at 184.
34. *Id.* at 191.
35. *Id.* at 198.
36. *Id.* at 202.
37. 537 P.2d 635 (Idaho 1975).
38. *Id.* at 653.
39. *San Antonio*, 411 U.S.1.
40. *Robinson*, 303 A.2d 273.
41. *Id.* at 282.
42. *San Antonio*, 411 U.S.1.
43. *Robinson*, 303 A.2d 273.
44. 554 P.2d 139 (Or. 1976).
45. *Id.* at 149.
46. 547 P.2d 609 (Kan. 1976).
47. *Robinson*, 303, A.2d 273.
48. 376 A.2d 359 (Conn. 1977).
49. *Id.* at 368.
50. *Id.* at 371.
51. *Id.* at 373-374.
52. *Horton v. Meskill*, 195 Conn. 24 (January 1985).
53. 408 N.Y.S.2d 606 (N.Y. 1978). On October 26, 1981 a New York State appeals court upheld the lower court's decision.
54. *Id.* at 636.
55. *Id.* at 638.

56. *Id.* at 638.
57. *Id.* at 639.
58. *Id.* at 640.
59. 453 N.Y.S.2d 643 (Court of Appeals, 1982).
60. *Seattle School Dist. No. 1 of King County v. State*, 585 P.2d 71 (Wash. 1978).
61. *Northshore*, 530 P.2d 178.
62. *Seattle School District*, 585 P.2d at 116.
63. 255 S.E.2d. 859 (West Va. 1979).
64. *Id.* at 884.
65. *Id.* at 861.
66. *A Master Plan for Public Education.* West Virginia Board of Education, Roy Truby, State Superintendent of Schools, James P. Clark, Board President, Charleston, West Virginia, 1982.
67. 399 A.2d 360 (Pa. 1979).
68. *Id.* at 365.
69. *Id.* at 366.
70. *Id.* at 365-367.
71. No. C - 73688 (Colo. 1979).
72. *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (1982).
73. *Board of Educ. of City School Dist. of Cincinnati v. Walter*, 390 N.E.2d. 813, (Ohio 1979).
74. *Id.* at 815.
75. *Id.* at 818.
76. *Id.* at 819.
77. *Id.* at 819.
78. *Id.* at 824.
79. *Id.* at 824.
80. 606 P.2d 310 (Wyo. 1980).
81. *Id.* at 329-330.
82. *Id.* at 334.
83. *Id.* at 318.
84. *San Antonio*, 411 U.S.1.
85. *Washakie*, 606 P.2d, at 335.
86. CA 8275 (Polk County, Ga., 1981).
87. *Id.* at 17.
88. *Id.* at 22.
89. *McDaniel v. Thomas*, 285 S.E.2d 156 (Georgia 1981).
90. A - 58438 (Baltimore City, Md. 1981).
91. This portion has been interpreted by the courts as "equal protection."
92. Article VIII, Section 1, Maryland Constitution, *Somerset* 14.
93. *Id.* at 22.
94. *San Antonio*, 411 U.S.1.
95. *Somerset*, A-58438, at 36-37.
96. 458 A.2d 758 (Md. 1983).
97. 651 S.W.2d 90 (Ark. 1983).
98. 348 N.W.2d 303 (Mich. Court of Appeals, 1984).
99. *Horton*, 376 A.2d 359.
100. *Robinson*, 303 A.2d 273.
101. *Seattle School Dist.*, 585 P.2d 71.
102. *Serrano*, 557 P.2d 929.
103. *Washakie*, 606 P.2d 310.
104. *Dupree*, 651 S.W.2d 90.
105. *Pauley*, 255 S.E.2d 859.
106. *Board of Education*, 390 N.E.2d 813.
107. *Danson*, 399 A.2d 360.
108. *McDaniel*, 285 S.E.2d 156.
109. *Lujan*, NO C-73688.
110. *Levittown*, 408 N.Y.S.2d 606.
111. *Dupree*, 651. S.W.2d 90.